HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A No.1939 of 2005
Date of decision : 15.5..2007

Sakatar Singh and others **.....Appellants**

versus

Simarjit Kaur and others **.....Respondents**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Premjit Kalia, Advocate for the appellants.

* * *

ORDER

HEMANT GUPTA, J.

The plaintiffs are in second appeal aggrieved against the judgment and decree passed by the Courts below whereby suit for declaration that plaintiffs are the owners of the suit land on the basis of sale deed dated 12.3.1993, was dismissed.

The plaintiffs purchased the suit land from Jinda Singh vide registered sale deed dated 12.3.1993 for a total sale consideration of Rs.17,500/-. However, it has been found that Jinda Singh has no interest in the suit property as in the judgment and decree dated 5.10.1994, Exhibit D-1, it was held that plaintiff in the said suit alongwith Mohinder Singh are the exclusive owners in possession of the suit land. The said suit was filed on 28.10.1992 and the sale deed was executed in favour of the appellants by Jinda Singh on 12.3.1993 during the pendency of the said suit and thus, it is held that such decree is hit by doctrine of lis pendens.

Learned counsel for the appellants has pointed out that the decree Exhibit D-1 is a collusive decree and on the basis of such decree, the doctrine of lis pendens cannot be applied. However, such argument is not available to the appellant as the appellant has not challenged the said decree dated 5.10.1994 in the present suit that the said decree is a collusive decree. In the absence of any challenge, no issue was framed and no evidence has been led by any of the parties. It is not permissible for the appellants to raise such a plea for the first time in second appeal.

I do not find any illegality or irregularity in the findings recorded by the Courts below which may raise any substantial question of law for consideration of this Court in second appeal.

The appeal stands dismissed.

(HEMANT GUPTA)
JUDGE

May 15, 2007
**mohinder*